



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB3298

by Rep. Darlene J. Senger

SYNOPSIS AS INTRODUCED:

New Act

Creates the Physical Fitness Center Employee Background Check Act. Provides that a physical fitness center employer who makes a conditional offer of employment to an applicant for a position as an employee shall initiate a fingerprint-based criminal history record check on the applicant, if a background check has not been previously conducted. Provides that the Department of State Police shall notify the physical fitness center of any convictions associated with the fingerprints submitted. Provides that the applicant or employee may be required to pay all related application and fingerprinting fees. Provides that the physical fitness center employer shall retain on file, for a period of 5 years, records of criminal records requests for all employees. Provides other requirements for fingerprint-based criminal history records checks and employer's files. Provides that if an employee is suspended from employment based on the results of a criminal background check conducted under this Act, and the results prompting the suspension are subsequently found to be inaccurate, the employee is entitled to recover backpay from his or her physical fitness center employer for the suspension period, provided that the employer is responsible for the inaccuracy. Authorizes the Department of Public Health to exercise the powers and duties prescribed by the Civil Administrative Code of Illinois for administration of licensing acts and shall exercise other powers and duties necessary for effectuating the purpose of the Act. Provides that any person who is found to have violated any provision of the Act is guilty of a petty offense for the first offense and a Class A misdemeanor for the second and any subsequent offense.

LRB098 10879 MGM 41384 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Physical Fitness Center Employee Background Check Act.

6 Section 5. Purpose. The General Assembly finds that it is
7 in the public interest to protect children of the State of
8 Illinois from possible harm by requiring a criminal background
9 check of certain physical fitness center employees who have or
10 may have contact with children.

11 Section 10. Applicability. This Act applies to all
12 employees of a physical fitness center employer where the
13 employee provides physical fitness services, personal training
14 services, non-physical fitness services, or optional physical
15 fitness services to children.

16 Section 15. Definitions. In this Act:

17 "Applicant" means an individual seeking employment with a
18 physical fitness center employer who has received a bona fide
19 conditional offer of employment.

20 "Child" means a person under 17 years of age.

21 "Conditional offer of employment" means a bona fide offer

1 of employment by a physical fitness center employer to an
2 applicant that is contingent upon the receipt of
3 fingerprint-based criminal history records check.

4 "Department" means the Department of Public Health.

5 "Employee" means any individual hired, employed, or
6 retained by an employer.

7 "Fingerprint-based criminal history records check" means a
8 livescan fingerprint-based criminal history records check
9 submitted as a fee applicant inquiry in the form and manner
10 prescribed by the Department of State Police.

11 "Initiate" means to obtain from an applicant or employee
12 his or her social security number, demographics, a disclosure
13 statement, and an authorization for the physical fitness center
14 or its designee to request a fingerprint-based criminal history
15 records check; transmit this information electronically to the
16 physical fitness center; conduct Internet searches on certain
17 web sites, including without limitation the Illinois Sex
18 Offender Registry, the Department of Corrections' Sex Offender
19 Search Engine, the Department of Corrections' Inmate Search
20 Engine, the Department of Corrections Wanted Fugitives Search
21 Engine, the National Sex Offender Public Registry, and the
22 website of the Health and Human Services Office of Inspector
23 General to determine if the applicant is a sex offender or has
24 been a prison inmate, or conduct similar searches as defined by
25 rule; and have the applicant's or employee's fingerprints
26 collected and transmitted electronically to the Department of

1 State Police.

2 "Livescan vendor" means an entity whose equipment has been
3 certified by the Department of State Police to collect an
4 individual's demographics and inkless fingerprints and, in a
5 manner prescribed by the Department of State Police,
6 electronically transmit the fingerprints and required data to
7 the Department of State Police and a daily file of required
8 data to the physical fitness center.

9 "Non-physical fitness services" means services or
10 amenities offered by the physical fitness center that are not
11 directly related to physical fitness activities and that are
12 not included in the price of membership to the physical fitness
13 center and includes, but is not limited to, locker fees, spa
14 treatments, massage, tanning, personal grooming services,
15 laundry fees, room rental, parking, food and beverage,
16 vitamins, nutritional supplements, shoes, clothing, and sports
17 or exercise equipment.

18 "Optional physical fitness services" means additional
19 goods or physical fitness services offered by the physical
20 fitness center that are not part of the membership package or
21 contract, but are available for additional cost, and includes,
22 but is not limited to, personal training services, physical
23 fitness, wellness or exercise classes, nutritional counseling,
24 weight reduction, court time, privileges to use other physical
25 fitness centers, and use of specialized physical fitness
26 equipment or facilities, such as rock climbing walls or aquatic

1 facilities.

2 "Personal training services" means services performed for
3 a fee by a personal trainer or fitness instructor for
4 individuals or groups relating to developing, monitoring, or
5 supervising physical training, exercise, or fitness programs,
6 education and instruction regarding the use of exercise
7 equipment or techniques, or giving advice relating to any of
8 these subjects or related issues, such as diet.

9 "Physical fitness facility" means the following:

10 (1) Any of the following indoor facilities that is (i)
11 owned or operated by a park district, municipality, or
12 other unit of local government, including a home rule unit,
13 or by a public or private elementary or secondary school,
14 college, university, or technical or trade school and (ii)
15 supervised by one or more persons, other than maintenance
16 or security personnel, employed by the unit of local
17 government, school, college, or university for the purpose
18 of directly supervising the physical fitness activities
19 taking place at any of these indoor facilities: a swimming
20 pool; stadium; athletic field; football stadium; soccer
21 field; baseball diamond; track and field facility; tennis
22 court; basketball court; or volleyball court; or similar
23 facility as defined by Department rules.

24 (2) Any of the following outdoor facilities that is (i)
25 owned by a municipality, township, or other unit of local
26 government, including a home rule unit, or by a public or

1 private elementary or secondary school, college,
2 university, or technical or trade school and (ii)
3 supervised by one or more persons, other than maintenance
4 or security personnel, employed by the unit of local
5 government, school, college, or university for the purpose
6 of directly supervising the physical fitness activities
7 taking place at any of these facilities: a swimming pool;
8 athletic field; football stadium; soccer field; baseball
9 diamond; track and field facility; tennis court;
10 basketball court; or volleyball court; or similar facility
11 as defined by Department rules.

12 "Physical fitness facility" includes any facility
13 during any activity or program organized by a private or
14 not-for-profit organization and organized and supervised
15 by a person or persons other than the employees of the unit
16 of local government, school, college, or university.

17 (3) Any other indoor or outdoor establishment, whether
18 public or private, that provides services or facilities
19 focusing on cardiovascular exertion or gaming as defined by
20 Department rules.

21 "Physical fitness services" includes instruction,
22 training, or assistance in physical culture, bodybuilding,
23 exercising, weight reducing, figure development, judo, karate,
24 self-defense training, or any similar activity. "Physical
25 fitness services" also includes the use of the facilities of a
26 physical fitness center for any of the activities mentioned in

1 this definition or membership in any group formed by a physical
2 fitness center for any of these purposes.

3 Section 20. Fingerprint-based criminal history records
4 check.

5 (a) After the effective date of this Act, any applicant or
6 employee who desires to be employed by a physical fitness
7 center must authorize the physical fitness center or its
8 designee to request a fingerprint-based criminal history
9 records check. This authorization shall allow the physical
10 fitness center to request and receive information and
11 assistance from any State or local governmental agency. Each
12 individual shall submit his or her fingerprints to the
13 Department of State Police in an electronic format that
14 complies with the form and manner for requesting and furnishing
15 criminal history record information prescribed by the
16 Department of State Police. The fingerprints submitted under
17 this Section shall be checked against the fingerprint records
18 in the Department of State Police criminal history record
19 databases. The Department of State Police shall charge a fee
20 for conducting the criminal history records check, which shall
21 not exceed the actual cost of the records check. The livescan
22 vendor may act as the designee for physical fitness center
23 employers in the collection of Department of State Police fees
24 and shall deposit those fees into the State Police Services
25 Fund. The Department of State Police shall provide information

1 concerning any criminal convictions against the individual.

2 (b) A fingerprint-based criminal history records check is
3 not required for physical fitness center employees who have
4 been continuously employed by a physical fitness center
5 employer prior to the effective date of this Act and have met
6 the requirements for criminal history background checks prior
7 to the effective date of this Act. Nothing in this subsection
8 (b) shall be construed to prohibit a physical fitness center
9 employer from initiating a criminal history records check for
10 these employees. If these employees seek a new position with a
11 different physical fitness center employer, then a
12 fingerprint-based criminal history records check shall be
13 conducted.

14 (c) After the effective date of this Act, a physical
15 fitness center employer who makes a conditional offer of
16 employment to an applicant for a position as an employee shall
17 initiate a fingerprint-based criminal history record check on
18 the applicant, if a background check has not been previously
19 conducted.

20 (d) When initiating a background check, a physical fitness
21 center employer shall request the applicant's or employee's
22 social security number, demographics, disclosure, and
23 authorization information within 2 working days after the
24 authorization is secured. The applicant or employee must have
25 his or her fingerprints collected electronically and
26 transmitted to the Department of State Police within 10 working

1 days. The physical fitness center employer must transmit all
2 necessary information and fees to the livescan vendor and
3 Department of State Police within 10 working days after receipt
4 of the authorization.

5 (e) A physical fitness center employer may initiate a
6 fingerprint-based background check for any of its employees,
7 but may not use this process to initiate background checks for
8 residents.

9 (f) As long as the employee has had a fingerprint-based
10 criminal history record check requested by the physical fitness
11 center employer, no further criminal history record checks
12 shall be necessary. The Department of State Police shall notify
13 the physical fitness center of any additional convictions
14 associated with the fingerprints previously submitted.

15 Section 25. Application fees. Except as otherwise provided
16 in this Act, the applicant or employee may be required to pay
17 all related application and fingerprinting fees, including,
18 but not limited to, the amounts established by the Department
19 of State Police to process fingerprint-based criminal history
20 records checks.

21 Section 30. Physical fitness center employer files. The
22 physical fitness center employer shall retain on file, for a
23 period of 5 years, records of criminal records requests for all
24 employees. The physical fitness center employer shall retain a

1 copy of (i) the disclosure and authorization forms, (ii) the
2 livescan request form, and (iii) all notifications resulting
3 from the fingerprint-based criminal history records check and
4 waiver, if appropriate, for the duration of the individual's
5 employment.

6 Section 35. Immunity from liability. A physical fitness
7 center employer shall not be liable for the failure to hire or
8 to retain an applicant or employee who has a criminal history.
9 However, if an employee is suspended from employment based on
10 the results of a criminal background check conducted under this
11 Act, and the results prompting the suspension are subsequently
12 found to be inaccurate, the employee is entitled to recover
13 backpay from his or her physical fitness center employer for
14 the suspension period, provided that the employer is
15 responsible for the inaccuracy.

16 Section 40. Violations. Any person who is found to have
17 violated any provision of this Act is guilty of a petty offense
18 for the first offense and a Class A misdemeanor for the second
19 and any subsequent offense.

20 Section 45. Duties of the Department. The Department shall
21 exercise the powers and duties prescribed by the Civil
22 Administrative Code of Illinois for administration of
23 licensing acts and shall exercise other powers and duties

1 necessary for effectuating the purpose of this Act.